

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RYAN CORNELL,)	Case No. 1:23-cv-00416
)	
Plaintiff,)	Judge J. Philip Calabrese
)	
v.)	Magistrate Judge
)	Jonathan D. Greenberg
SOCIAL SECURITY)	
ADMINISTRATION,)	
)	
Defendant.)	
)	

OPINION AND ORDER

Plaintiff Ryan Cornell, proceeding *pro se*, alleges that the Social Security Administration is improperly delaying his receipt of social security benefits. (ECF No. 1-1, PageID #8.) Defendant moves to dismiss for lack of jurisdiction and failure to state a claim. (ECF No. 4.) For the reasons that follow, the Court **GRANTS** Defendant’s motion.

FACTUAL AND PROCEDURAL BACKGROUND

Initially, Plaintiff brought this action in Cleveland Municipal Court. (*See* ECF No. 1-1, PageID #8.) In full, his complaint alleges, “they said I can’t receive my ben[e]fits [until] a month after I discharge and I cannot receive anything if they are late [discharging] me.” (*Id.*) As compensation, Plaintiff seeks \$6,000.00 per day for what the Court assumes is the rest of his life, though his handwritten complaint legibly reads only “the rest of m l.” (*Id.*) Defendant timely removed Plaintiff’s case—because he sued a federal agency—citing 28 U.S.C. § 1442 (ECF No. 1, ¶ 1, PageID #1)

and moved to dismiss (ECF No. 4). Plaintiff did not oppose or otherwise respond to Defendant's motion.

ANALYSIS

Defendant moves to dismiss under Rules 12(b)(1) and 12(b)(6), arguing that the Court lacks subject-matter jurisdiction and that Plaintiff's complaint fails to state a claim. (*See generally id.*; ECF No. 4-1.) The Court addresses each ground in turn.

I. Rule 12(b)(1)

Rule 12(b)(1) provides for dismissal where the court lacks subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1) & (h)(3). The standard for reviewing a motion under that rule "depends on whether the defendant makes a factual or facial challenge." *Solis v. Emery Fed. Credit Union*, 459 F. Supp. 3d 981, 986–87 (S.D. Ohio 2020) (citing *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007)). Unlike a factual attack, which requires the district court to analyze conflicting evidence to determine if jurisdiction exists, a facial attack "challenges the jurisdictional sufficiency of the complaint given those facts." *Id.* at 987 (citing *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)). "When reviewing a facial attack, a district court takes the allegations in the complaint as true, similar to the approach employed in reviewing a Rule 12(b)(6) motion to dismiss." *Id.* (citation omitted). Defendant lodges a facial attack here, arguing that even if Plaintiff's allegations are true, the derivative jurisdiction doctrine bars his claims. (ECF No. 4-1, PageID #30–31.) Therefore, the Court accepts the facts Plaintiff pleads as true.

I.A. Derivative Jurisdiction Doctrine

The derivative jurisdiction doctrine is “best understood as a procedural bar to the exercise of federal judicial power.” *Federal Home Loan Mortg. Corp. v. Gilbert*, 656 F. App’x 45, 53 (6th Cir. 2016) (Sutton, J., concurring). It holds that where a State court lacked subject-matter jurisdiction over a claim, the federal court cannot acquire jurisdiction after removal. *Arizona v. Manypenny*, 451 U.S. 232, 242 n.17 (1981) (citing, among other cases, *Lambert Run Coal Co. v. Baltimore & O.R. Co.*, 258 U.S. 377, 382 (1922)). The doctrine applies even if the federal court would have had jurisdiction if the plaintiff filed there originally. *Id.*

To be sure, the derivative jurisdiction doctrine does not apply in every case. Congress explicitly eliminated the doctrine for cases removed under 28 U.S.C. § 1441. 28 U.S.C. § 1441(f); *see also Federal Home Loan Mortg. Corp.*, 656 F. App’x at 49. Most circuits hold, however, that it still applies to cases removed under Section 1442, as here. *Howard v. Social Sec. Admin.*, No. 5:22-cv-829, 2022 WL 17418151, at *3 n.1 (N.D. Ohio Sept. 21, 2022), *report and recommendation adopted*, No. 5:22-cv-829, 2022 WL 16847434 (N.D. Ohio Nov. 10, 2022). Though the Sixth Circuit has neither approved nor disapproved of that practice, this courts in this District follow the majority approach. *Id.*; *see also Pickett v. Office of Disability Adjudication & Rev.*, No. 3:08-cv-2553, 2009 WL 1661954, at *4 (N.D. Ohio June 15, 2009). Accordingly, the Court must determine whether the Cleveland Municipal Court had subject-matter jurisdiction. If not, this Court lacks jurisdiction too.

I.B. State Court's Jurisdiction

Having reviewed Plaintiff's complaint, the Court finds that the State court lacked jurisdiction. To sue a federal agency, like the Social Security Administration, a plaintiff must identify a waiver of sovereign immunity. *Muniz-Muniz v. United States Border Patrol*, 741 F.3d 668, 671 (6th Cir. 2013) (citing *Reed v. Reno*, 146 F.3d 392, 397–98 (6th Cir. 1998)). Otherwise, a court lacks subject-matter jurisdiction. *Id.* Plaintiff, proceeding *pro se*, did not provide any such basis when he filed in Cleveland Municipal Court. (See ECF No. 1-1, PageID #8.)

Nor could he. To the extent Plaintiff alleges a claim regarding a benefits decision, the Social Security Administration's limited waiver of sovereign immunity is outlined in 42 U.S.C. § 405(g). Under that statute, a plaintiff must bring an action after a final decision and hearing "in the district court of the United States for the judicial district in which [he] resides." 42 U.S.C. § 405(g). Even if Plaintiff followed the statute's administrative process (which is unclear from the record), he still filed suit in Cleveland Municipal Court. (See ECF No. 1-1, PageID #8.) Therefore, the State court lacked subject-matter jurisdiction. Even if the Court construes his claim as one under the Federal Tort Claims Act, Plaintiff fares no better. 42 U.S.C. § 405(h) (prohibiting suits for tort claims arising under the Social Security Act); *see also* 28 U.S.C. § 1346(b) (vesting exclusive jurisdiction in the United States district courts). Because the State court lacked subject-matter jurisdiction, this Court also lacks jurisdiction after removal under 28 U.S.C. § 1442.

* * *

For these reasons, the Court **GRANTS** Defendant's motion to dismiss under Rule 12(b)(1).

II. Rule 12(b)(6)

Defendant also moves to dismiss under Rule 12(b)(6), which provides for dismissal when a plaintiff's complaint "fails to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Court need not reach this additional ground because it lacks subject-matter jurisdiction, as explained above. *Ex parte McCordle*, 74 U.S. 506, 514 (1868) ("[W]hen [jurisdiction] ceases to exist, the only function remaining . . . is that of announcing the fact and dismissing the cause.").

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's motion (ECF No. 4) and **DISMISSES** Plaintiff's action for lack of subject-matter jurisdiction.

SO ORDERED.

Dated: May 5, 2023



J. Philip Calabrese
United States District Judge
Northern District of Ohio